

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE VICTOR GRAY,

Defendant-Appellant.

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UNPUBLISHED

July 13, 2001

No. 229125

Jackson Circuit Court

LC No. 99-096841-FH

Before: Saad, P.J., and Holbrook, Jr. and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his plea-based conviction of prison escape, MCL 750.193. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with prison escape based on an incident that occurred in 1993. Defendant does not indicate whether he was represented by or waived his right to counsel during the district court arraignment. He has not provided a transcript of that proceeding. At the preliminary examination, defendant was represented by appointed counsel. Both defendant and counsel participated in the proceeding by cross examining witnesses. Counsel indicated that he had offered to assist defendant, and that defendant had requested such assistance. Defendant was represented by appointed counsel at his circuit court arraignment. On January 14 and 28, 2000 the trial court held hearings on pre-trial motions filed by defendant. Defendant was represented by appointed counsel; however, he presented the bulk of the arguments on the motions.

On the date scheduled for trial, the trial court indicated that defendant was proceeding *in propria persona* with the assistance of appointed counsel. The trial court ruled that defendant could not present evidence regarding either his parole status or the defense of duress to the jury. The court stated that testimony on those issues would be taken out of the presence of the jury so that the issues would be reserved for appeal. Thereafter, defendant agreed to plead guilty pursuant to an agreement reached under *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993). The prosecutor agreed to charge defendant as a second habitual offender rather than as a fourth habitual offender, and to recommend a minimum term of twenty months in prison.

At sentencing, defendant was represented by counsel. Defendant raised several objections to the presentence report. The court sentenced defendant to twenty to ninety months in prison, to be served consecutively to his previous sentence.

After sentencing defendant, through appointed counsel, moved to withdraw his plea. He argued that he did not make a knowing and intelligent waiver of his right to counsel, that he was compelled to enter the plea after the court excluded his defense of duress, and that he was told that the sentencing guidelines applied to the offense of which he was convicted when that was not the case. The trial court denied defendant's motion to withdraw his plea, finding that defendant was represented by counsel, and that he received the benefits of his plea and sentence bargains.

There is no absolute right to withdraw a guilty plea once the trial court has accepted it. If a defendant moves to withdraw a plea after sentence has been imposed, the decision to grant or deny the motion is within the trial court's discretion. We will not disturb the trial court's decision unless that decision constituted a clear abuse of discretion resulting in a miscarriage of justice. *People v Davidovich*, 238 Mich App 422, 425; 606 NW2d 387 (1999).

The right of a criminal defendant to represent himself is implicitly guaranteed by the United States Constitution, US Const, Am VI, and explicitly guaranteed by the Michigan Constitution and statute. Const 1963, art 1, § 13; MCL 763.1. Several requirements must be met before a defendant can proceed *in propria persona*. A defendant's request to represent himself must be unequivocal. *People v Adkins*, 452 Mich 702, 722; 551 NW2d 108 (1996). The trial court must determine if the defendant's assertion of his right to represent himself is knowing, intelligent, and voluntary. *Id.* The court must make the defendant aware of the dangers and disadvantages of self-representation. *Id.*, 721. The court must determine that the defendant's self-representation will not disrupt, inconvenience, or burden the court. *People v Anderson*, 398 Mich 361, 368; 247 NW2d 857 (1976). The court must comply with the requirements of MCR 6.005. Once a defendant has waived his right to counsel, the record must show that at each subsequent proceeding the court advised defendant of his right to counsel and defendant waived that right. MCR 6.005(E); *People v Lane*, 453 Mich 132, 137; 551 NW2d 382 (1996).

Defendant argues that the trial court abused its discretion by denying his motion to withdraw his plea because his waiver of his right to counsel was not knowing and voluntary. We disagree and affirm defendant's conviction. The record does not reflect that defendant made an unequivocal request to represent himself. Defendant does not state that he made such a request. The prosecution seems to indicate that such a request might have been made at the district court arraignment; however, no transcript of that proceeding has been provided. Absent a transcript, we are unable to determine whether defendant made such a request, and if he did, whether the district court made the required inquiries and determination. This issue may be considered waived on appeal. *People v Wilson*, 196 Mich App 604, 615; 493 NW2d 471 (1992). At any rate, the record shows that defendant was represented by appointed counsel who assisted him throughout the proceedings. The record indicates that defendant requested that counsel assist him. A request to proceed *in propria persona*, with the assistance of counsel or with standby counsel does not constitute an unequivocal request to engage in self-representation. *People v*

*Dennany*, 445 Mich 412, 446; 519 NW2d 128 (1994). The trial court did not abuse its discretion by denying defendant's motion to withdraw his plea on this ground.

Defendant's argument that he entered a conditional plea and preserved the issues of the exclusion of his defense of duress and of certain witnesses is without merit. A conditional guilty plea requires the agreement of the defendant, the prosecution, and the court. *People v Andrews*, 192 Mich App 706, 707; 481 NW2d 831 (1992). Defendant has not shown the existence of such an agreement. His assertion that the trial court's allowance of testimony regarding his parole status constituted such an agreement is not reflected on the record.

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy